



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Blue Ridge Regional Office

www.deq.virginia.gov

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO ROANOKE VALLEY RESOURCE AUTHORITY FOR SMITH GAP REGIONAL LANDFILL VWP Permit No. 05-1844

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Roanoke Valley Resource Authority, regarding the Smith Gap Regional Landfill, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "BRRO-R" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
6. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.
7. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
8. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
9. "Landfill" means the Smith Gap Regional Landfill, located at 8484 Bradshaw Road in Roanoke County, Virginia. The Landfill is owned and operated by the RVRA.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
13. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.
14. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*

15. "RVRA" means the Roanoke Valley Resource Authority, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. The Roanoke Valley Resource Authority is a "person" within the meaning of Va. Code § 62.1-44.3.
16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
17. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
18. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
19. "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344).
20. "USACE" means the United States Army Corps of Engineers.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.
24. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. RVRA owns and operates the Landfill in Roanoke County, Virginia. The Landfill operates under Solid Waste Management Permit No. 555, issued on June 25, 1993 and VPDES Industrial Stormwater General Permit No. VAR051539, issued on July 1, 2004.
2. On November 9, 2006, the Board issued Virginia Water Protection Individual Permit No. 05-1844 ("the Permit") to the RVRA for the purpose of constructing Phases V-IX of the

Landfill, with proposed impacts to 3,338 linear feet of stream bed of an unnamed tributary of Bradshaw Creek.

3. On August 13 and September 3, 2013, Department staff inspected the Landfill for compliance with the requirements of the Permit, State Water Control Law and the Regulations. The DEQ inspector observed that grading activities associated with the construction of a sediment trap in 2009 and subsequent repairs to that sediment trap resulted in a discharge of fill material into a stream bed that impacted a total of 209 linear feet of an unnamed tributary of Bradshaw Creek.
4. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit dredging or filling of surface waters without a Virginia Water Protection Permit issued by the Director. The Permit does not authorize the 194 linear feet of permanent stream impacts that resulted from construction of the sediment trap as described above.
5. At § I(C)(23), the Permit states the following:

the permittee shall notify the DEQ of any additional impacts to surface waters, including wetlands; and of any change to the type of surface water impacts associated with this project. Any additional impacts, modifications, or changes shall be subject to individual permit review and/or modification of this permit. Compensation may be required.
6. On March 21, 2014, DEQ issued NOV No. 13-03-BRRO-002 to RVRA for the violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.
7. On April 8, 2014, Department staff met with representatives of RVRA to discuss the violations.
8. On August 15, 2014, RVRA submitted a Unified Stream Methodology and Stream Evaluation Report ("Evaluation Report"). The Evaluation Report included a proposal for mitigation ("Compensation Plan") that called for recordation of conservation easements equivalent to a total of 205 stream compensation credits and the purchase of four stream compensation credits from a mitigation bank.
9. Based on the results of the August 13, 2013 inspection and the April 8, 2014 meeting, the Board concludes that RVRA has violated Va. Code § 62.1-44.15:20, 9 VAC 25-210-50, and Section I(C)(23) of the Permit as described in paragraph C(3), above.
10. In order for RVRA to return to compliance, DEQ staff and representatives of RVRA have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders RVRA, and RVRA agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$3,413.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

RVRA shall include its Federal Employer Identification Number (FEIN) **(54-1668577)** with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, the RVRA shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of RVRA for good cause shown by RVRA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, RVRA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. RVRA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. RVRA declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial

review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by RVRA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. RVRA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. RVRA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. RVRA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and RVRA. Nevertheless, RVRA agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after RVRA has completed all of the requirements of the Order;
- b. RVRA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to RVRA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve RVRA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by RVRA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of RVRA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind RVRA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of RVRA.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, RVRA voluntarily agrees to the issuance of this Order.

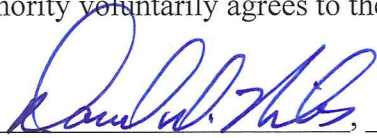
And it is so ORDERED this 17th day of December, 2014.



Robert J. Weld, Regional Director
Department of Environmental Quality

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Roanoke Valley Resource Authority voluntarily agrees to the issuance of this Order.

Date: October 16, 2014 By: ,
Daniel D. Miles Chief Executive Officer
Roanoke Valley Resource Authority

Commonwealth of Virginia
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 16th day of October, 2014, by Daniel D. Miles who is Chief Executive Officer of Roanoke Valley Resource Authority, on behalf of the company.




Notary Public

225219
Registration No.

My commission expires: 10/31/2015

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

1. Not later than November 17, 2014, RVRA shall submit a revised Compensation Plan for a total of 209 stream compensation credits. The Compensation Plan may include a combination of permittee-provided compensation, including deed restrictions on qualifying streams and purchase of stream compensation credits from a DEQ-approved mitigation bank or in-lieu fee fund that is authorized and approved by DEQ to sell credits in the area in which the impacts occurred and has credits available (as released by DEQ) to achieve no-net-loss of function in all surface waters in accordance with 9 VAC 25-210-116. The final Compensation Plan shall include a mechanism for protection in perpetuity of the compensation sites(s) to include all state waters within the compensation site boundary or boundaries. Such protections shall be in place within 30 days of final Compensation Plan approval. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a compensation area with the exception of maintenance or corrective action measures authorized by the Board. Unless specifically authorized by the Board through the issuance of a VWP individual or general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands.
2. RVRA shall respond to any DEQ Notice of Deficiency regarding the Compensation Plan within fourteen (14) calendar days. RVRA shall comply with the Compensation Plan after it is approved by DEQ.
3. Not later than 30 days after final Compensation Plan approval, RVRA shall submit:
 - a. Proof of purchase of the number of stream compensation credits specified in the approved Compensation Plan. This proof of purchase shall include documentation that the mitigation bank has debited credits for the appropriate number of stream mitigation credits from the mitigation bank ledgers.
 - b. Proof of recordation of the protective instrument utilized pursuant to the requirements of Paragraph 1 above for the compensation site(s).
4. Unless otherwise specified in this Order, RVRA shall submit all requirements of Appendix A of this Order to:

Robert Steele
Enforcement Specialist Sr.
VA DEQ – Blue Ridge Regional Office
3019 Peters Creek Road

Roanoke, VA 24019
(540) 562-6777
Fax (540) 562-6725
Robert.Steele@deq.virginia.gov